

1 I, Robert Barnes, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts of the State
3 of California. I am employed by defendant Curtis O. Barnes, P.C. I make this
4 declaration in support of Defendants' Motion to Set Aside Default. I have
5 personal knowledge of the facts set forth below, and could and would testify
6 thereto if called upon to do so.

7 2. On or about November 29, 2007 defendants Curtis O. Barnes, P.C.,
8 Curtis O. Barnes and Daniel Rupp were served with the Summons and Complaint
9 in this action, and defendant Fortis Capital, LLC was served on or about
10 December 10, 2007.

11 3. On or about December 5, 2007, on behalf of Defendants, I contacted
12 counsel for Plaintiff, Ronald Wilcox, in an attempt to resolve this matter before
13 Defendants were forced to retain outside counsel to respond to the Complaint.
14 Although I had a number of discussions with him regarding potential resolution,
15 and I sent him our firm's account notes and phone logs at his request, we were
16 unable to reach agreement. I therefore asked Mr. Wilcox for an extension of time
17 for Defendants to file their answer. Mr. Wilcox granted the extension through
18 January 11, 2007.

19 4. Defendants subsequently made the decision to retain outside legal
20 counsel to handle the defense of this matter. On January 10, 2008, I contacted
21 Tomio Narita of Simmonds & Narita LLP to discuss whether he would represent
22 the Defendants. Mr. Narita agreed to review the complaint and, if he was able to
23 represent Defendants, he agreed to prepare an engagement agreement. He sent the
24 agreement to me on January 11, 2008.

25 5. On January 11, 2008, I emailed Mr. Wilcox and informed him that
26 Defendants had retained Tomio Narita to defend the case. I informed Mr. Wilcox
27 that Mr. Narita would file an answer to the Complaint on behalf of Defendants the
28

1 next week and further, asked Mr. Wilcox to contact Mr. Narita regarding this
2 matter. A true and correct copy of that email is attached hereto as **Exhibit A**.

3 6. With the assumption that the executed engagement agreement and
4 retainer had been returned to Mr. Narita, and that his firm had therefore been
5 engaged to represent Defendants, I left the office to attend a trial in another matter
6 during the week of January 14 through January 18, 2008.

7 7. I later learned that the agreement and retainer had been lost in the
8 mail, and that, as a result, Mr. Narita had not received the retainer and executed
9 engagement agreement, and he had not appeared in this action for Defendants.
10 Accordingly, on January 23, 2008, I directed my staff to stop payment on the
11 original retainer, and to send a new retainer and engagement agreement to Mr.
12 Narita's office promptly.

13 8. I believe that Defendants have meritorious defenses to the allegations
14 made in the Complaint in this action. A true and correct copy of the Answer
15 Defendants propose to file in this action is attached hereto as **Exhibit B**.

16 I declare under penalty of perjury under the laws of the State of
17 California that the foregoing information is true and correct. Executed this 19th
18 day of February, 2008 in San Diego, California.

19
20
21 By: 

Robert Barnes

Exhibit A

Rob Barnes

From: Rob Barnes
Sent: Friday, January 11, 2008 4:58 PM
To: 'Ronald Wilcox'
Subject: RE: Harrison v. Barnes

Ron,

I've retained outside counsel who should be filing an answer either today or early next week. He is Tomio Narita, and I believe you know him. Please contact him regarding this matter. I'm sorry we couldn't work something out without me cutting a check to outside counsel.

I still hope we can resolve this matter shortly with his help.

Robert Barnes

Law Office of Curtis O Barnes

866-378-8545

rbarnes@locob.com

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From: Ronald Wilcox [<mailto:ronaldwilcox@mac.com>]
Sent: Monday, January 07, 2008 4:31 PM
To: Rob Barnes
Subject: Harrison v. Barnes

Dear Rob,

I was waiting to receive phone bills (reflecting the name and address of the long distance carrier, account #, etc.) showing all incoming and outgoing calls relating to this account. I do appreciate what you have sent, but I have not received the above.

Perhaps we will be able to make further progress towards resolving this matter after Defendants answer the complaint and Plaintiff is more aware of Defendants' version of the facts and their defenses.

Please be kind enough to have your answer on file by Friday, January 11, 2008.

Thank you,

Ronald Wilcox
Attorney at Law
2160 The Alameda, First Floor
San Jose, CA 95126
Tel: (408) 296-0400
Fax: (408) 296-0486
ronaldwilcox@mac.com

2/8/2008

2/8/2008

Exhibit B

1 TOMIO B. NARITA (SBN 156576)
2 JEFFREY A. TOPOR (SBN 195545)
3 SIMMONDS & NARITA LLP
4 44 Montgomery Street, Suite 3010
5 San Francisco, CA 94104-4816
6 Telephone: (415) 283-1000
7 Facsimile: (415) 352-2625
8 tnarita@snllp.com
9 jtopor@snllp.com

10 Attorneys for Defendants
11 Curtis O. Barnes, P.C., Curtis O. Barnes,
12 Fortis Capital, LLC and Daniel Rupp

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 RHONDA HARRISON,

17 Plaintiff,

18 vs.

19 CURTIS O. BARNES, P.C.,
20 CURTIS O. BARNES, FORTIS
21 CAPITAL, LLC, and DANIEL
22 RUPP,

23 Defendants.

CASE NO.: C07 05529 RS

**ANSWER OF DEFENDANTS TO
COMPLAINT**

1 Defendants CURTIS O. BARNES, P.C., CURTIS O. BARNES (“Barnes”),
2 FORTIS CAPITAL, LLC (“Fortis”), and DANIEL RUPP (“Rupp”) (collectively,
3 “Defendants”) hereby submit the following Answer to the Complaint filed in this
4 action by plaintiff RHONDA HARRISON (“Plaintiff”):

5 1. In answering Paragraph 1 of the Complaint, Defendants aver that the
6 contents of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (The
7 “FDCPA”) are self-explanatory. Except as herein admitted, the remaining
8 allegations of Paragraph 1 are denied.

9 2. Denied.

10 3. In answering Paragraph 3 of the Complaint, Defendants aver that the
11 contents of the FDCPA, 15 U.S.C. § 1692 *et seq.* are self-explanatory. Except as
12 herein admitted, the remaining allegations of Paragraph 3 are denied.

13 4. Admitted.

14 5.¹ In answering Paragraph 5 (at page 2, line 23) of the Complaint,
15 Defendants admit that Plaintiff alleges that jurisdiction of this Court arises under
16 15 U.S.C § 1692k(d) and 28 U.S.C. § 1337 and that supplemental jurisdiction
17 exists for Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367. Except as
18 herein admitted, the remaining allegations of Paragraph 5 are denied.

19 6. In answering Paragraph 6 (at page 3, line 1) of the Complaint,
20 Defendants admit that defendant Curtis O. Barnes, P.C. conducts business in this
21 judicial district. Except as herein admitted, the remaining allegations of Paragraph
22 5 are denied.

23 5b. In answering the second Paragraph 5b (at page 3, line 4) of the
24 Complaint, Defendants admit, on information and belief that Plaintiff is a natural
25

26
27 ¹Defendants note that there are two paragraphs numbered “5” and “6” in the
28 Complaint. Defendants have labeled the second set as “5b” and “6b” and identifies
each by page and line number.

1 person residing in San Jose, California. Defendants lack sufficient knowledge to
2 form a belief as to whether Plaintiff's financial obligation at issue was incurred
3 primarily for personal, family or household purposes, and therefore can neither
4 admit nor deny whether Plaintiff qualifies as a "consumer" as defined by 15
5 U.S.C. § 1692a(3) and on that basis, deny the allegation. Except as herein
6 admitted, the remaining allegations of Paragraph 5b are denied.

7 6b. In answering Paragraph 6b (at page 3, line 6) of the Complaint,
8 Defendants admit that defendant Curtis O. Barnes, P.C. is a law firm in the State
9 of California with its principal place of business at 390 W. Cerritos Ave.,
10 Anaheim, CA 92805 that has, at times, engaged in the practice of the collection of
11 debts for third parties. Except as herein admitted, the remaining allegations of
12 Paragraph 6b are denied.

13 7. In answering Paragraph 7 of the Complaint, Defendants admit that
14 Curtis O. Barnes, P.C. has, at times, acted as a debt collector as defined by the
15 FDCPA, 15 U.S.C. § 1692(a)(6). Except as herein admitted, the remaining
16 allegations of Paragraph 7 are denied.

17 8. In answering Paragraph 8 of the Complaint, Defendants admit that
18 Barnes is the Chief Executive Officer of Curtis O. Barnes, P.C. and that he is
19 directly involved in the day-to-day operations of Curtis O. Barnes, P.C., including
20 training and managing of employees, and reviewing or supervising the review of
21 accounts. Defendants further admit that Barnes has engaged in the business of
22 collecting debts owed to third parties. Except as herein admitted, the remaining
23 allegations of Paragraph 8 are denied.

24 9. In answering Paragraph 9 of the Complaint, Defendants admit that
25 Barnes has, at times, acted as a debt collector as defined by the FDCPA, 15 U.S.C.
26 § 1692(a)(6). Except as herein admitted, the remaining allegations of Paragraph 9
27 are denied.

1 10. In answering Paragraph 10 of the Complaint, Defendants admit that
2 Fortis is a Nevada Limited Liability Corporation. Except as herein admitted, the
3 remaining allegations of Paragraph 10 are denied.

4 11. Denied.

5 12. Denied.

6 13. In answering Paragraph 13 of the Complaint, Defendants admit that
7 Rupp is an employee of Curtis Barnes, P.C. and that he has, at times, engaged in
8 the collection of debts for third parties. Except as herein admitted, the remaining
9 allegations of Paragraph 13 are denied.

10 14. In answering Paragraph 14 of the Complaint, Defendants admit that
11 Rupp has, at times, acted as a debt collector as defined by 15 U.S.C. § 1692(a)(6)
12 and California Civil Code § 1788.2(c). Except as herein admitted, the remaining
13 allegations of Paragraph 14 are denied.

14 15. Denied.

15 16. Denied.

16 17. Defendants aver that no response to Paragraph 17 is required of them.

17 18. In answering Paragraph 18 of the Complaint, Defendants admit that
18 Plaintiff incurred a debt to Bowflex but lack sufficient knowledge to form a belief
19 as to the remaining allegations of Paragraph 18, and on that basis, deny them.
20 Except as herein admitted, the remaining allegations of Paragraph 18 are denied.

21 19. In answering Paragraph 19 of the Complaint, Defendants admit that
22 Plaintiff's financial obligation was sold to Fortis. Except as herein admitted, the
23 remaining allegations of Paragraph 19 are denied.

24 20. In answering Paragraph 20 of the Complaint, Defendants admit that
25 Curtis O. Barnes, P.C. was engaged to collect the financial obligation of behalf of
26 Fortis. Except as herein admitted, the remaining allegations of Paragraph 20 are
27 denied.

1 21. In answering Paragraph 21 of the Complaint, Defendants admit that
2 Curtis O. Barnes, P.C. received a letter from Credit Solutions indicating that it
3 represented Plaintiff. Defendants lack sufficient knowledge to form a belief as to
4 the remaining allegations of Paragraph 21 of the Complaint and on that basis, deny
5 them.

6 22. Denied.

7 23. In answering Paragraph 23 of the Complaint, Defendants admit that
8 on or about January 24, 2007, Curtis O. Barnes, P.C. obtained Plaintiff's credit
9 report which contained an addresses listed for Plaintiff in San Jose, California.
10 Except as herein admitted, the remaining allegations of Paragraph 23 are denied.

11 24. Denied.

12 25. In answering Paragraph 25 of the Complaint, Defendants admit that
13 Curtis O. Barnes, P.C. sent Plaintiff a letter dated January 25, 2007 to Plaintiff, the
14 contents of which are self-explanatory. Except as herein admitted, the remaining
15 allegations of Paragraph 25 are denied.

16 26. Denied.

17 27. In answering Paragraph 27 of the Complaint, Defendants admit that
18 Curtis O. Barnes, P.C. sent Plaintiff a letter dated January 25, 2007 to Plaintiff, the
19 contents of which are self-explanatory. Except as herein admitted, the remaining
20 allegations of Paragraph 27 are denied.

21 28. In answering Paragraph 28 of the Complaint, Defendants admit that
22 on or about February 27, 2007, Curtis O. Barnes, P.C. placed a telephone call in an
23 attempt to reach Plaintiff. Except as herein admitted, the remaining allegations of
24 Paragraph 28 are denied.

25 29. In answering Paragraph 29 of the Complaint, Defendants admit that
26 on or about February 27, 2007, a representative of Curtis O. Barnes, P.C. placed a
27 telephone call in an attempt to reach Plaintiff. Defendants admit that the
28

1 representative spoke to a woman who identified herself as the wife of Plaintiff's
2 landlord. Except as herein admitted, the remaining allegations of Paragraph 29 are
3 denied.

4 30. In answering Paragraph 30 of the Complaint, Defendants admit that
5 on or about February 27, 2007, a representative of Curtis O. Barnes, P.C. placed a
6 telephone call in an attempt to reach Plaintiff. Defendants admit that the
7 representative spoke to a woman who identified herself as the wife of Plaintiff's
8 landlord, and that the representative left a message asking that Plaintiff return the
9 call. Except as herein admitted, the remaining allegations of Paragraph 30 are
10 denied.

11 31. Defendants lack sufficient knowledge to form a belief as to the
12 allegations of Paragraph 31 of the Complaint and on that basis, deny them.

13 32. In answering Paragraph 32 of the Complaint, Defendants admit that
14 on or about February 28, 2007, a man identifying himself as Plaintiff's landlord
15 called Curtis O. Barnes, P.C. and spoke with Rupp. Except as herein admitted, the
16 remaining allegations of Paragraph 32 are denied.

17 33. Defendants presently lack sufficient knowledge to form a belief as to
18 the allegations of Paragraph 33 of the Complaint and on that basis, deny them.

19 34. In answering Paragraph 34 of the Complaint, Defendants admit that
20 on or about February 28, 2007, a man identifying himself as Plaintiff's landlord
21 called Curtis O. Barnes, P.C., spoke with Rupp and said that he would not give
22 Rupp Plaintiff's phone number or place of employment, and that there was "an
23 outfit" handling the matter. Except as herein admitted, the remaining allegations
24 of Paragraph 34 are denied.

25 35. In answering Paragraph 34 of the Complaint, Defendants admit that
26 on or about February 28, 2007, a man identifying himself as Plaintiff's landlord
27 called Curtis O. Barnes, P.C., spoke with Rupp, and said that he would not give
28

1 Rupp Plaintiff's phone number or place of employment but that he would give
2 Plaintiff Rupp's telephone number. Except as herein admitted, the remaining
3 allegations of Paragraph 35 are denied.

4 36. Denied.

5 37. Denied.

6 38. In answering Paragraph 38 of the Complaint, Defendants admit that
7 in his telephone conversation with Plaintiff's landlord, Rupp stated that he could
8 not disclose the name of the creditor to Plaintiff's landlord. Except as herein
9 admitted, the remaining allegations of Paragraph 38 are denied.

10 39. Denied.

11 40. Denied.

12 41. Denied.

13 42. In answering Paragraph 42 of the Complaint, Defendants admit that
14 Plaintiff made telephone calls to Curtis O. Barnes, P.C. on or about February 28,
15 2007 and offered to make payment arrangements. Except as herein admitted, the
16 remaining allegations of Paragraph 42 are denied.

17 43. Denied.

18 44. In answering Paragraph 44 of the Complaint, Defendants admit that
19 Plaintiff made telephone calls to Curtis O. Barnes, P.C. on or about February 28,
20 2007 and offered to pay \$100 per month on her financial obligation. Except as
21 herein admitted, the remaining allegations of Paragraph 44 are denied.

22 45. Denied.

23 46. In answering Paragraph 46 of the Complaint, Defendants deny, on
24 information and belief, that "Ms. Harrison said that what she makes may sound
25 like a lot bit it wasn't in light of her monthly expenses," that "Ms. Harrison
26 explained she was a single mother, living paycheck to paycheck" and that she
27
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1 “continued to explain that she paid \$1,250 for rent and over \$700 for day care.”

2 Except as herein admitted, the remaining allegations of Paragraph 46 are denied.

3 47. In answering Paragraph 47 of the Complaint, Defendants admit that
4 during the phone call with Plaintiff, the representative of Curtis O. Barnes, P.C.
5 informed Plaintiff that if they could not make an arrangement, he would
6 recommend further action on the account. Except as herein admitted, the
7 remaining allegations of Paragraph 47 are denied.

8 48. Denied.

9 49. Denied.

10 50. Denied.

11 51. Denied.

12 52. Denied.

13 53. In answering Paragraph 53 of the Complaint, Defendants admit that
14 Plaintiff gave Curtis O. Barnes, P.C.’s representative the name of her place of
15 employment. Except as herein admitted, the remaining allegations of Paragraph
16 53 are denied.

17 54. Denied.

18 55. In answering Paragraph 55 of the Complaint, Defendants lacks
19 sufficient knowledge to form a belief as to whether after her telephone
20 conversation with Rupp, “she had to take an hour away from work so that she
21 could calm down and stop crying” and on that basis, denies the allegation. Except
22 as herein admitted, the remaining allegations of Paragraph 55 are denied.

23 56. In answering Paragraph 56 of the Complaint, Defendants admit that
24 Rupp placed a telephone call to Plaintiff’s employer on or about February 28,
25 2007. Except as herein admitted, the remaining allegations of Paragraph 56 are
26 denied.

1 57. In answering Paragraph 57 of the Complaint, Defendants admit that
2 Rupp placed a telephone call to Plaintiff's employer on or about February 28,
3 2007 and left a message. Defendants lack sufficient knowledge to form a belief as
4 to whether the person with whom Rupp spoke was the Human Resources Manager
5 and on that basis, deny the allegation. Except as herein admitted, the remaining
6 allegations of Paragraph 57 are denied.

7 58. In answering Paragraph 58 of the Complaint, Defendants admit that
8 Rupp placed a telephone call to Plaintiff's employer on or about February 28,
9 2007 and left a message. Defendants lack sufficient knowledge to form a belief as
10 to whether the person with whom Rupp spoke was the Human Resources Manager
11 and on that basis, deny the allegation. Except as herein admitted, the remaining
12 allegations of Paragraph 58 are denied.

13 59. Denied.

14 60. Admitted.

15 61. Admitted.

16 62. Admitted.

17 63. Denied.

18 64. Denied.

19 65. In answering Paragraph 65 of the Complaint, Defendants admit that
20 Curtis O. Barnes, P.C. sent a letter dated to Plaintiff, the contents of which are
21 self-explanatory. Except as herein admitted, the remaining allegations of
22 Paragraph 65 are denied.

23 66. In answering Paragraph 66 of the Complaint, Defendants admit that
24 Curtis O. Barnes, P.C. sent a letter to Plaintiff, the contents of which are self-
25 explanatory. Except as herein admitted, the remaining allegations of Paragraph 66
26 are denied.

27 67. Denied.

1 68. Denied.

2 69. Denied.

3 70. Denied.

4 71. Denied.

5 72. In answering Paragraph 72 of the Complaint, Defendants admit that
6 Rupp placed a telephone call on March 21, 2007 in an attempt to reach Plaintiff.
7 Except as herein admitted, the remaining allegations of Paragraph 72 are denied.

8 73. In answering Paragraph 73 of the Complaint, Defendants admit that
9 Rupp placed a telephone call on March 21, 2007 in an attempt to reach Plaintiff.
10 Defendants also admit that a woman who identified herself as Dina called Curtis
11 O. Barnes, P.C. and spoke to Rupp on or about March 21, 2007. Except as herein
12 admitted, the remaining allegations of Paragraph 73 are denied.

13 74. Defendants deny, on information and belief, that Dina asked Rupp for
14 “the name of the person who retained his services” and on that basis also, denies
15 the remaining allegations of Paragraph 74 of the Complaint.

16 75. Denied.

17 76. In answering Paragraph 76 of the Complaint, Defendants admit that
18 during Rupp’s conversation with Dina, Dina stated that she would have Plaintiff
19 call Curtis O. Barnes, P.C. back. Except as herein admitted, the remaining
20 allegations of Paragraph 76 are denied.

21 77. Denied.

22 78. Defendant denies, on information and belief, the allegations of
23 Paragraph 78 of the Complaint.

24 79. Denied.

25 80. Denied.

26 81. Denied.

27

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1 82. Defendants lacks sufficient knowledge to form a belief as to the
2 allegations of Paragraph 82 of the Complaint and on that basis, deny them.

3 83. Denied.

4 84. Denied.

5 85. Denied.

6 86. In answering Paragraph 86 of the Complaint, Defendants admit that
7 no defendant in this action sued Plaintiff. Except as herein admitted, the
8 remaining allegations of Paragraph 86 are denied.

9 87. Denied.

10 88. Denied.

11 89. Denied.

12 90. Denied.

13 91. Denied.

14 92. In answering Paragraph 92 of the Complaint, Defendants aver that the
15 contents of the FDCPA, 15 U.S.C. § 1692 *et seq.* are self-explanatory. Except as
16 herein admitted, the remaining allegations of Paragraph 92 are denied.

17 93. Denied.

18 94. Denied.

19 95. Denied.

20 96. Defendants incorporate by reference paragraphs 1 through 95 above
21 as if fully stated herein.

22 97. Denied.

23 98. Denied.

24 99. Defendants incorporate by reference paragraphs 1 through 98 above
25 as if fully stated herein.

26 100. Denied.

27 101. Denied.

1 102. Defendants incorporate by reference paragraphs 1 through 101 above
2 as if fully stated herein.

3 103. In answering Paragraph 103 of the Complaint, Defendants aver that
4 the contents of the FDCPA, 15 U.S.C. § 1692(a) are self-explanatory. Except as
5 herein admitted, the remaining allegations of Paragraph 103 are denied.

6 104. Denied.

7 105. Denied.

8 106. Denied.

9 107. Denied.

10 108. Denied.

11 109. Denied.

12 110. Defendants incorporate by reference paragraphs 1 through 109 above
13 as if fully stated herein.

14 111. Denied.

15 112. Denied.

16 113. Denied.

17 114. Denied.

18 115. Defendants incorporate by reference paragraphs 1 through 114 above
19 as if fully stated herein.

20 116. In answering Paragraph 116 of the Complaint, Defendants aver that
21 the contents of California Business & Professions Code section 6129 are self-
22 explanatory. Except as herein admitted, the remaining allegations of Paragraph
23 116 are denied.

24 117. Denied.

25 118. Denied.

26 119. Denied.

1 **AFFIRMATIVE DEFENSES**

2 As and for separate affirmative defenses to the Complaint, Defendants
3 allege as follows:

4
5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to State a Claim)**

7 The allegations of the Complaint fail to state a claim against Defendants
8 upon which relief can be granted.

9
10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Statute of Limitations/Laches)**

12 The purported claims set forth in the Complaint are barred in whole or in
13 part by the applicable statutes of limitation and/or the equitable doctrine of laches.

14
15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Bona Fide Error)**

17 To the extent that any violation of law occurred, which Defendants
18 expressly deny, said violation was not intentional and resulted from a bona fide
19 error notwithstanding the maintenance by Defendants of procedures reasonably
20 adapted to avoid any such error.

21
22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Unclean Hands)**

24 The allegations in the Complaint and relief requested are on information and
25 belief barred in whole or in part by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(No Wilful Conduct)

Defendants acted in good faith at all times in their dealings with Plaintiff, and if any conduct by Defendants is found to be unlawful, which Defendants expressly deny, such conduct was not willful and should not give rise to liability.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that she may have and is therefore barred from recovering damages, if any, from Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff has waived her rights, if any, to recover the relief she seeks in the Complaint based upon her own conduct and admissions with respect to the debt.

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendants have, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

NINTH AFFIRMATIVE DEFENSE

(Apportionment)

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendants. The liability, if any exists, of

1 all Defendants and/or any responsible parties, named or unnamed, should be
2 apportioned according to their relative degrees of fault, and the liability of these
3 Defendants should be reduced accordingly.

4
5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Supervening Cause)**

7 The causes of action in the Complaint are barred, in whole or in part, to the
8 extent that any injury or loss sustained was caused by intervening or supervening
9 events over which Defendants had or have no control.

10
11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Equitable Indemnity)**

13 To the extent that Plaintiff has suffered any damage as a result of any
14 alleged act or omission of Defendants, which Defendants deny, Defendants are
15 entitled to equitable indemnity according to comparative fault from other persons
16 and/or entities causing or contributing to such damages, if any.

17
18 **TWELFTH AFFIRMATIVE DEFENSE**

19 **(Setoff)**

20 To the extent that Plaintiff has suffered any damage as a result of any
21 alleged act or omission of Defendants, which Defendants deny, Defendants are, on
22 information and belief, entitled to a setoff in the amount Plaintiff owes to on her
23 unpaid account, including any recoverable interest and attorneys' fees.

THIRTEENTH AFFIRMATIVE DEFENSE

(Not Debt Collector)

Defendant Fortis Capital LLC is not a debt collector under state or federal law. No Defendant is a debt collector under the Rosenthal Act.

FOURTEENTH AFFIRMATIVE DEFENSE

(First Amendment)

Defendants' conduct is protected under the First Amendment of the United States Constitution and the California Constitution. Plaintiff's proposed interpretation of provisions of the FDCPA and the Rosenthal Act must be rejected as they would place an unreasonable restraint upon Defendants' First Amendment rights, thereby raising serious constitutional issues.

WHEREFORE, Defendants request judgment as follows:

1. That Plaintiff takes nothing by the Complaint, which should be dismissed with prejudice.
2. That Defendants recover from Plaintiff their costs according to proof.
3. That Defendants recover their attorneys' fees according to proof.
4. That the Court orders such other further reasonable relief as the Court may deem just and proper.

DATED: January 24, 2008

SIMMONDS & NARITA LLP

By: s/Tomio Narita
Tomio B. Narita
Attorneys for Defendants